

TFC Contract No. 19-023-000
Negrete & Kolar Architects, LLP
Requisition 303-9-00340
Project No. 17-002-0405
Amendment No. 1

**AMENDMENT NO. 1
TO THE
PROFESSIONAL ARCHITECTURAL/ENGINEERING SERVICES
AGREEMENT
BETWEEN
THE TEXAS FACILITIES COMMISSION
AND
NEGRETE & KOLAR ARCHITECTS, LLP**

This Amendment No. 1 to the Professional Architectural/Engineering Services Agreement (hereinafter referred to as “Amendment No. 1”) is entered into by and between the Texas Facilities Commission (hereinafter referred to as “TFC”), a state agency located at 1711 San Jacinto Boulevard, Austin, Texas 78701, as Owner (as defined in *2015 Uniform General Conditions*, Section 1.28), and Negrete & Kolar Architects, LLP (hereinafter referred to as “A/E”), located at 11720 N. IH35, Austin, Texas, 78753 (hereinafter referred to collectively as the “Parties”), to amend the original Professional Architectural/Engineering Services Agreement between the parties dated December 7, 2018 (hereinafter referred to as the “Agreement”).

RECITALS

WHEREAS, on December 7, 2018, the parties entered into that one certain *Professional Architectural/Engineering Services Agreement Between the Texas Facilities Commission and Negrete & Kolar Architects, LLP* (hereinafter referred to as the “Agreement”); and

WHEREAS, the Parties desire to extend the Term of the Agreement, to modify certain provisions of ARTICLE X, Insurance, and to include additional provisions adopted subsequent to the execution of the Agreement in order to reflect changes required by the Texas Legislature, or to comply with requirements of the State Auditor’s Office, the Office of the Attorney General, or the Comptroller of Public Accounts;

NOW THEREFORE, the parties hereby agree as follows:

1. Unless clearly provided otherwise herein, all terms and phrases in initial caps herein shall have the same meaning as the terms and phrases with initial caps in the Agreement.
2. The Parties agree to modify ARTICLE I – DEFINITIONS, by adding the following definition:

“*HUB Compliance Reporting System* means the Texas Facilities Commission Historically Underutilized Business (“HUB”) online reporting system located at <https://tfc.gob2g.com>. The *HUB Compliance Reporting System* is used to maintain business records documenting compliance with the HUB Subcontracting Plan (“HSP”) by submission of monthly Progress

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Assessment Reports. See Section 11.2, Historically Underutilized Businesses (“HUBs”).”

3. The Parties agree to modify ARTICLE III – TERM AND TERMINATION, Section 3.1, Duration, by deleting Section 3.1 in its entirety, and replacing it with the following:

“3.1. Duration. This Agreement shall be effective as of the Effective Date and shall terminate on December 31, 2020, unless extended by the Parties by amendment to this Agreement or terminated earlier, as provided below.”

4. The Parties agree to modify ARTICLE III – TERM AND TERMINATION, Section 3.2, Early Termination, by adding Subsections 3.2.1 and 3.2.2., as follows:

“3.2.1. Rights Upon Termination or Expiration of Agreement. In the event that the Agreement is terminated for any reason, or upon its expiration, TFC shall retain ownership of all associated work products and documentation obtained from the A/E under this Agreement.

3.2.2. No Liability Upon Termination. If this Agreement is terminated for any reason, TFC and the State of Texas shall not be liable to A/E for any damages, claims, losses, or any other amounts arising from or related to any such termination absent an award of damages pursuant to Texas Government Code, Chapter 2260.”

5. The Parties agree to modify ARTICLE VI – WARRANTIES AND REPRESENTATIONS BY A/E, Section 6.1 – Warranties and Representations by A/E, by deleting Subsection 6.1.15, Prohibition Against Boycotting Israel, in its entirety and replacing it with Subsection 6.1.15, as follows:

“6.1.15. Entities that Boycott Israel. Pursuant to Section 2270.002 of the Texas Government Code, A/E certifies that either (i) it meets an exemption criterion under Section 2270.002; or (ii) it does not boycott Israel and will not boycott Israel during the term of the Agreement.”

6. The Parties agree to modify ARTICLE VI – WARRANTIES AND REPRESENTATIONS BY A/E, Section 6.1 – Warranties and Representations by A/E, by adding Subsections 6.1.18 through and including 6.1.20, which shall read in their entirety as follows:

“6.1.18. Certification Concerning Restricted Employment for Former State Officers or Employees Under Government Code § 572.069. A/E certifies that it has not employed and will not employ a former TFC or state officer who participated in a procurement or contract negotiation for TFC involving A/E within two (2) years after the state officer or employee left state agency employment or service. This certification only applies to former state officers or employees whose service or employment ceased on or after September 1, 2015.

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6.1.19. Excluded Parties. A/E certifies that it is not listed on the federal government's terrorism watch list as described in Executive Order 13224.

6.1.20. Suspension and Debarment. A/E certifies that it and its principals are not suspended or debarred from doing business with the state or federal government as listed on the State of Texas Debarred Vendor List maintained by the Texas Comptroller of Public Accounts and the System for Award Management (SAM) maintained by the General Services Administration.”

7. The Parties agree to modify ARTICLE X – INSURANCE, Subsection 10.2.1, Workers’ Compensation and Employer’s Liability Insurance, by deleting Paragraph 10.2.1.1 in its entirety, and replacing it with Paragraph 10.2.1.1 as follows:

“10.2.1.1. Pursuant to Texas Labor Code §406.096 (b), A/E shall require each Subcontractor to certify in writing to A/E that said Subcontractor provides workers’ compensation and employers’ liability insurance for all of Subcontractor’s employees employed on this public project. Owner is entitled, upon request and without expense, to receive copies of Subcontractor’s written certifications.”

8. The Parties agree to modify ARTICLE XI – MISCELLANEOUS PROVISIONS, Section 11.2 – Historically Underutilized Businesses (“HUB’s”), by adding Subsection 11.2.1, Requirement to Utilize HUB Compliance Reporting System, as follows:

“11.2.1. Requirement to Utilize HUB Compliance Reporting System. Pursuant to Texas Administrative Code, Title 34 §§ 20.85(f)(1)(2) and 20.287(b), TFC administers monthly HUB Subcontracting Plan (“HSP”) to include the Progressive Assessment Report (“PAR”) compliance monitoring through a HUB Compliance Reporting System known as B2G. A/E and A/E’s Subcontractors/Subconsultants must submit required PAR information into the B2G system as a condition of payment. Any delay in the timely submission of PAR information into the B2G system will be treated as a deficiency and the payment request will be subject to suspension until such deficiency has been resolved.”

9. The Parties agree to further modify ARTICLE XI – MISCELLANEOUS PROVISIONS, by inserting Sections 11.28 through and including 11.31, and re-numbering existing Section 11.28, Entire Agreement and Modification as Section 11.31, so that the inserted and existing Sections read in their entirety, as follows:

“11.28. False Statements; Breach of Representations. By signature to this A/E, A/E makes all the representations, warranties, guarantees, certifications and affirmations included in this Agreement. If A/E signs this Agreement with a false statement or it is subsequently determined that A/E has violated any of the representations, warranties, guarantees, certifications

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or affirmations included in this Agreement, A/E shall be in default under this Agreement, and TFC may terminate or void this Agreement for cause and pursue other remedies available to TFC under this Agreement and applicable law.

11.29. Abandonment and Default. If A/E defaults on this Agreement, TFC reserves the right to cancel the Agreement without notice and either re-solicit or re-award the Agreement to the next best responsive and responsible respondent. The defaulting A/E will not be considered in the re-solicitation and may not be considered in future solicitations for the same type of work.

11.30. Antitrust and Assignment of Claims. A/E represents and warrants that neither A/E nor any firm, corporation, partnership, or institution represented by A/E, or anyone acting for such firm, corporation or institution has (i) violated the antitrust laws of the State of Texas under Tex. Bus. & Com. Code, Chapter 15, or the federal antitrust laws; or (ii) communicated directly or indirectly the proposal to any competitor or any other person engaged in such line of business during the procurement process for this Agreement. A/E assigns to the State of Texas all of A/E's rights, title, and interest in and to all claims and causes of action A/E may have under the antitrust laws of Texas or the United States for overcharges associated with the Agreement.

11.31. Entire Agreement and Modification. This Agreement and its integrated attachment(s) constitute the entire agreement of the parties and such are intended as a complete and exclusive statement of the promises, representations, negotiations, discussions, and other agreements that may have been made in connection with the subject matter hereof. Unless an integrated attachment to this Agreement specifically displays a mutual intent to amend a particular part of this Agreement, general conflicts in language between any such attachment and this Agreement shall be construed consistently with the terms of this Agreement. Unless otherwise expressly authorized by the terms of this Agreement, no modification, renewal, extension, or amendment to this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto."

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10. All other terms and conditions of the Agreement not expressly amended herein shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have made and executed this Amendment No. 1 to be effective as of the date of the last Party to sign.

TEXAS FACILITIES COMMISSION

NEGRETE & KOLAR ARCHITECTS, LLP

By: DocuSigned by:
Mike Novak
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Mike Novak

Executive Director

Date of Execution: 12/20/2019 | 12:50 PM CST

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DED m

By: DocuSigned by:
David Negrete
871427738C15470...

Name: David Negrete

Title: Principal

Date of Execution: 12/20/2019 | 12:30 PM CST